United Nations A/C.6/54/SR.17

General Assembly
Fifty-fourth session

Official Records

Distr.: General
15 November 1999

Original: English

Sixth Committee

Summary record of the 17th meeting
Held at Headquarters, New York, on Wednesday, 27 October 1999, at 10 a.m.

Chairman: Mr. Mochochoko ..... (Lesotho)

Contents

Visit by the President, Vice-President, Judges and Registrar of the International Court of Justice

Agenda item 155: Report of the International Law Commission on the work of its fifty-first session (*continued*)

Agenda item 159: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*)

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The meeting was called to order at 10.15 a.m.

Visit by the President, Vice-President, Judges and Registrar of the International Court of Justice

1. **The Chairman** welcomed to the Committee the President of the International Court of Justice, Mr. Stephen Schwebel, the Vice-President of the Court, Mr. Christopher Weeramantry, the Judges of the Court, Mr. Gilbert Guillaume, Mr. Raymond Ranjeva, Ms. Rosalyn Higgins and Mr. Gonzalo Parra-Aranguren, and the Registrar of the Court, Mr. Eduardo Valencia-Ospina. He then invited the President of the Court to address the Committee.

2. **Mr. Schwebel** (President of the International Court of Justice) said that the pace of the Court's work was determined not only by the Rules of Court, the will of the members of the Court and the capacities of the Registry, but also by the cooperative attitude of States parties to the cases before it. If the parties raised preliminary objections for tactical rather than objective reasons, pleaded at excessive length and attached long annexes to their pleadings or called for unduly extended oral proceedings, the length of the proceedings would be drawn out. The same was true if the parties made repeated requests for extension of the deadlines for filing cases. The Court and its Rules Committee had begun to revise the Rules and working methods of the Court in order to expedite its procedures, and had invited the parties to the cases before it to cooperate in that process.

3. Reform and acceleration were needed more than ever because the Court's docket was so heavy. Eighteen cases had been filed in the previous year, bringing the total number of cases to 24. The docket included the following: a case concerning maritime delimitation and territorial issues between Qatar and Bahrain; a case brought by the Libyan Arab Jamahiriya against the United States of America concerning the interpretation and application of the 1971 Montreal Convention arising from the Lockerbie incident, although that case was inactive pending the outcome of the trial of the two accused persons that was to take place in the Netherlands in a special Scottish court; a case brought by the Islamic Republic of Iran against the United States of America for the destruction of oil platforms in the Persian Gulf during the Iran-Iraq war; a case brought by Bosnia and Herzegovina against the Federal Republic of Yugoslavia concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide; cases involving boundary issues between Cameroon and Nigeria, Botswana and Namibia, and Indonesia and Malaysia; a case brought by Germany against the United States of America concerning a German national who had been sentenced to death by a United States court without any notification of the German Consul-General and had subsequently been executed despite an order of the Court; eight cases brought by the Federal Republic of Yugoslavia against Belgium, Canada and other countries concerning the legality of the use of force; three cases brought by the Democratic Republic of the Congo against Burundi, Uganda and Rwanda, respectively; and two new cases, one brought by Croatia against the Federal Republic of Yugoslavia concerning the application of the Convention on the Prevention and Punishment of the Crime of Genocide, and one brought by Pakistan against India concerning the shooting down of a Pakistani aircraft. That list not only illustrated the breadth of the Court's docket and the importance of the cases it contained, but also the range of parties making use of the Court. Both the Court and Member States could take satisfaction from that.

4. **The Chairman** thanked the President of the International Court of Justice for his statement.

Agenda item 155: Report of the International Law Commission on the work of its fifty-first session (*continued*) (A/54/10 and Corr.1 and 2)

5. **Mr. Obou** (Côte d'Ivoire) said that the question of nationality was complex because it arose at the interface between international law and positive national law, yet it was vital to the identity of any individual, since to be stateless was to be dead to civic life. Statelessness posed a thorny problem for the international community, and his delegation shared the concerns of the International Law Commission in the matter. Yet it was also clear that legal scholars looked askance at dual or multiple nationality, which created a sort of "chameleon" citizen who could shift nationality at will.

6. The question of nationality was further complicated when, as a result of a succession of States, two or more legal systems collided or overlapped, and ostensibly logical and transparent criteria of nationality proved to be obscure and elusive when applied in real circumstances. The experience of African States with a French legal tradition was instructive in that regard.

7. To begin with, citizenship, which ought to be the natural concomitant of nationality, had been separated from it under colonial law. French colonial subjects had been French nationals but had for the most part been denied French citizenship. Moreover, when the former French colonies had gained independence, they had inherited permeable, fluid and arbitrary borders and overlapping

indigenous and colonial legal systems. Their legislators had had to choose between *jus sanguinis* or *jus solis* or some combination of the two as a basis for nationality. *Jus solis*, which relied on the criterion of "habitual residence", offered the advantage of logical simplicity but risked separating family groups or touching off migrations of population. To avoid those problems, most of the States in question had opted for nationality based on consanguinity.

8. However, in a society still heavily based on oral tradition whose population was constantly on the move, it was hard for an individual to present material proof of consanguinity. There was the further complication that a few nationals of the new States had maintained French nationality as well. In the States formed by the succession of former French colonies, the problem of nationality was far from resolved and tended to re-emerge during presidential and legislative elections.

9. The contribution of the International Law Commission to nationality law was a noteworthy achievement. There were just two points his delegation wished to raise in that connection. First, the wording of article 3 of the draft articles on nationality of natural persons in relation to the succession of States limited the scope of application of the draft articles to a succession of States occurring in conformity with international law. The Commission had decided not to address situations such as illegal annexation of territory. In many cases of succession the dividing line between legal and illegal was difficult to draw. However, the integrity of some States was being menaced by civil war and aggression, and statelessness was a grave problem in cases of illegal annexation. The law could not indefinitely ignore irregular situations associated with humanitarian problems. His delegation therefore intended to encourage the Commission to be more forward-looking and seek to anticipate needs.

10. His second point concerned the Commission's choice of "habitual residence" as the main criterion for establishing a presumption of nationality. Fortunately, the Commission had allowed it to remain a "rebuttable presumption". Habitual residence, which was based on *jus solis* rather than *jus sanguinis*, entailed risks for some developing States. Nationality, by establishing solid legal ties between a State and an individual, created obligations and conferred rights. Habitual residence in itself did not form a sufficient basis for those reciprocal ties. In its judgment in the *Nottebohm* case the International Court of Justice had seemed to be saying that habitual residence was a necessary but not sufficient criterion. Moreover, to make habitual residence the dominant criterion would tend to run counter to the recognition in the second preambular paragraph that nationality was essentially governed by internal law, the traditional prerogative of the State.

11. Since the Commission seemed to be suggesting that States should ignore the sacrosanct legal principle of non-retroactivity and furthermore was recommending that the draft articles should be adopted by the General Assembly in the form of a declaration, thus bypassing the process of ratification in arriving at a universal standard, it would be well if all delegations were agreed on the meaning. In order to be able to support the articles, his delegation would wish to see more explicit, less debatable criteria for determining the existence of an effective link, or genuine connection, such as those outlined in the *Nottebohm* judgment. Such an approach would also help to prevent any misinterpretation that might adversely affect developing countries.

12. **Mr. Szenasi** (Hungary) said that the draft articles on nationality of natural persons in relation to the succession of States afforded a workable framework of substantive issues and procedures for dealing with an issue that continued to pose sensitive political, legal and practical problems. He noted with satisfaction that draft articles 22 and 24, on which his country had concentrated during the earlier stages of work, had been further clarified and that draft article 16 had been elevated to the level of a general principle, while draft article 20 now included further measures to prevent statelessness. Those particular draft articles, together with draft articles 14, 15, 17 and 18, clearly demonstrated the international community's determination to protect the interests of individuals in the area of nationality.

13. General acceptance of and strict adherence to the principles set forth in the draft articles would constitute another step forward in the effort to safeguard human rights. The draft articles could also provide additional protection against any adverse measures to which minorities and others might be subjected during periods of unrest.

14. In view of the significant improvements and clarifications introduced to the text, he was convinced that the draft articles would now serve as a guiding force in the area of nationality regardless of format. His delegation therefore supported the proposal to recommend to the General Assembly their adoption in the form of a declaration. He also shared the view of the International Law Commission that the issues surrounding the nationality of legal persons were too specific and that the practical need for their solution was not evident. He thus agreed with the Commission's proposal that, on adoption of the declaration, the topic of nationality in relation to the succession of States should be deemed to have been successfully concluded.

15. **Mr. Niehaus** (Costa Rica) said that the issue of the nationality of natural persons in relation to the succession of States was made more difficult by the limited amount of case law, differences in national legislation and the political disputes that had occurred in some States involved in successions. Moreover, developments in the field of human rights law had shifted the centre of gravity of nationality law by introducing *jus cogens* provisions. Attribution of nationality could no longer be considered as merely a privilege of States but had, in some cases, become a positive obligation under human rights law.

16. His delegation therefore appreciated the delicate balance the Commission had struck in the draft articles between the fundamental rights of the persons concerned and the interests of States involved in a process of succession. From a human rights standpoint, it welcomed the wording of articles 1 and 4 recognizing the right to a nationality and calling upon States to prevent statelessness and felt that their general nature was appropriate, since they were based on the Universal Declaration of Human Rights. It could support the provision relating to presumption of nationality in article 5 which sought to prevent temporary statelessness and was pleased by the emphasis placed in article 11 on respect for the will of persons concerned. Paragraph 1 of article 8 set a realistic limitation on the obligation to attribute nationality, and the draft articles as a whole were neutral on the subject of dual nationality and gave States wide latitude in setting their own rules.

17. His delegation attached great importance to the provisions of article 12 urging States to take all appropriate measures to protect the unity of the family. However, it would have preferred even stricter wording allowing all members of a family group to acquire the same nationality if they would otherwise have had difficulties being united. His delegation also supported article 13, which provided for attribution of a State's nationality to a child born on the territory of that State after a succession. However, while that provision was valuable in that it prevented statelessness, a provision allowing the child to acquire the nationality of its parents would have been preferable. His delegation also supported the wording of article 19, which reflected current jurisprudence on the notion of an "effective link" between the individual and a State. Lastly, the emphasis in Part II of the draft articles on the principles of "habitual residence", "effective link" and "right of option" as they applied to different types of succession was welcome.

18. Overall, his delegation could accept the draft articles and agreed that the General Assembly should adopt them in the form of a declaration. A treaty would offer the advantage of being binding on States parties and bringing the codification process to a definitive close; however, in a succession of States, accession to the treaty by the new States would not be automatic, whereas the problem of nationality would require an immediate legal solution. If adopted as a declaration, the draft articles could be a source of inspiration in the ongoing development of customary international law, and all States involved in a succession could refer to it.

19. Her delegation regretted the Commission's decision not to pursue the topic of the nationality of legal persons in relation to the succession of States.

20. **Ms. Alajbeg** (Croatia) said that the draft articles on nationality in relation to the succession of States made a pertinent contribution to the codification and progressive development of international law. However, the draft articles departed considerably from the traditional approach to the law of nationality, which commonly confined legal issues of nationality to the domain of domestic law, and her delegation did not believe that States should be placed under constraints when applying the articles. A certain flexibility should be preserved; that could be achieved through the legal solutions contained in the articles themselves and the final form in which the articles were adopted.

21. Two important principles had been followed throughout the draft articles. One was that the proposed solutions must be based on an "appropriate connection" between the State and the individual. The second principle was that each type of change in regard to the predecessor State, such as unification, dissolution or separation, must be regarded separately in legal terms so as to reflect the facts of each case. In the case of the dissolution of federal States comprising constituent units, one specific criterion represented an appropriate connection, namely, the nationality of the constituent unit. That criterion should be the prevailing one, and its application should be regulated by a new, separate provision under article 22. Such a rule should reflect the established practice of successor States which, in attributing their nationality to individuals, chose the criterion of nationality of the constituent unit as the most appropriate connection between the State and the individual. The successor States to Yugoslavia and Czechoslovakia, for example, had adopted in their respective legislation the criterion of nationality of the republics which had constituted the former Yugoslav and Czechoslovak federations.

22. Consequently, her delegation associated itself with the comments made by Brunei Darussalam on article 22 in document A/CN.4/493, namely, that the article gave too much prominence to the criterion of habitual residence, in disregard of recent practice in Central and Eastern Europe,

where the primary criterion used had been that of the nationality of the former units of federal States.

23. The nationality of the constituent unit should therefore be the dominant criterion, with habitual residence a subsidiary criterion, subject to the domestic legislation of the successor State. In practice, the legislation of the successor States of federal predecessor States generally contained specific provisions concerning the mode of acquisition of nationality by persons concerned. The procedure for the acquisition of nationality by such persons was simpler and faster than the one prescribed for other aliens, so that the likelihood of their statelessness was minimized. In fact, the prospect of statelessness did not arise, as each individual had possessed the nationality of one of the constituent federal units prior to dissolution and maintained that nationality in the newly formed successor State. The draft articles should therefore contain a specific provision recognizing the nationality of the constituent unit as the general criterion for the attribution of nationality in the case of dissolution of a federation.

24. The draft articles would be more appropriately adopted in the form of a General Assembly declaration or resolution than in the form of a treaty. If the purpose of the proposed instrument was to provide States involved in a succession with a set of legal principles and recommendations to be followed in drafting nationality laws, a declaration would be sufficient. If adopted by consensus, such a declaration would acquire authority. It would set clear guidelines without crossing the line into the inherent domestic jurisdiction of a State. It might also have the advantage of speed and flexibility over a treaty, which could not be invoked when most needed, namely, in the case of a new State that had not had time to sign or ratify it. It was significant that the 1997 European Convention on Nationality had been ratified by only two States parties.

25. **Mr. Baena Soares** (Brazil) said it was clear from the report that the possibilities for the Commission's work were far from exhausted. It was increasingly important for analogous organizations, such as the Inter-American Juridical Committee, the Asian-African Legal Consultative Committee and the Committee of Legal Advisers on Public International Law of the Council of Europe, to establish a more intense dialogue with the Commission, and not only by sending representatives to its formal sessions. It would be appropriate to increase the exchange of publications and documentation between the Commission and each of those organizations. Greater openness towards the academic world would also be constructive. Like the Commission, the Inter-American Juridical Committee also held seminars on international law; it might therefore be appropriate for the persons in charge of those initiatives to meet so as to benefit from each other's experience.

26. The Commission periodically requested responses from Governments to questionnaires which it had circulated. Chapter III of the report mentioned the specific issues on which comments would be of particular interest to the Commission. One of the main factors in the success of the Commission's work was the dialogue and interaction between the Commission and the Sixth Committee. While the questionnaires could, of course, be shorter, their length was not a valid reason for failure to reply.

27. Turning to the draft articles on nationality of natural persons in relation to the succession of States, he noted with satisfaction the humanist philosophy and the concern for human rights reflected throughout the draft text. The preamble recalled the right of every person to a nationality, proclaimed in the Universal Declaration of Human Rights, and recognized that in matters concerning nationality, account should be taken both of the legitimate interests of States and those of individuals. The commentary on the preamble referred to the opinion of the Inter-American Court of Human Rights that the regulation of matters bearing on nationality was not within the sole jurisdiction of States.

28. His delegation was satisfied that the structure of the draft articles afforded sufficient scope for the topic, and it endorsed the proposal by the Chairman of the Commission that the text should be adopted. He wished to point out, however, that while his delegation had no objection to the draft articles being adopted in the form of a declaration, it believed that a convention would have greater authority and binding force. In any event, success would be determined by the willingness of Governments to implement whatever instrument was adopted. As always, the political will of Member States would be decisive.

29. His delegation concurred with the Commission that with the adoption of the draft articles its work on the topic should be considered concluded. If Member States so wished, they could always invite the Commission to resume its work on the topic of nationality of legal persons in relation to the succession of States.

30. **Mr. Grasselli** (Slovenia) said that his delegation supported the inclusion of the nationality of legal persons as a new topic in the Commission's programme of work.

31. The wording of the draft articles on nationality of natural persons in relation to the succession of States emphasized the generally accepted principle that the succession of States should not render natural persons stateless, and his delegation supported the recommendation

that the General Assembly should adopt the draft articles in the form of a declaration.

32. The basic criterion for acquiring nationality in the draft articles was habitual residence, and it was applied without discrimination to the cases of cession of part of a territory, dissolution of a State and separation. That solution did not seem the most appropriate in the case of the dissolution of a federal State, where the main criterion for attribution of nationality should be the citizenship of the former constituent republics. The laws concerning the citizenship of former constituent units had as a rule been harmonized. Furthermore, in the event of dissolution or separation of States, the pre-existent internal boundaries of constituent units became international frontiers, thus avoiding the phenomenon of statelessness or multiple nationality, which was the best possible solution. Such an approach took historical circumstances into account and fostered a feeling of belonging. The issue of population residing in third countries was also solved by using that criterion.

33. In the event of the dissolution of a federal State, habitual residence should serve as an auxiliary criterion. Persons habitually residing in the territory of one successor State who, as citizens of a former constituent republic became *ex lege* nationals of the successor State, could thus acquire the nationality of the State in whose territory they were residing if they wished to do so. If they chose not to take the nationality of the State in whose territory they resided, or if, after a succession, they wished to continue residing in the successor State as foreigners, they should be able to do so. The status provided for in article 14 was therefore too general, since it did not give the right to permanent residence, as provided for in the 1997 European Convention on Nationality. It would be preferable to include a provision stipulating the recognition of the nationality of constituent units of federal States in the event of their dissolution.

34. The right of option did not imply that double nationality could be avoided if the option was exercised on the basis of a prior agreement between the successor States, or, in the event of separation of States, with the predecessor State. As the dissolution or separation of States often occurred in turbulent circumstances, the issue of nationality between States concerned had to be solved at a later time or unilaterally. Articles 9 and 25 were of the utmost importance in that connection, as they entitled the successor State to make the attribution of nationality dependent on the renunciation of nationality, and required the predecessor State to cease to consider as its national a person who opted for the nationality of the successor State and habitually resided in the territory of that State. The same rule should apply *mutatis mutandis* in relation to the nationality of other successor States in the event of dissolution.

35. **Mr. Kranz** (Poland) said that the effects of State succession on nationality was an important topic from the perspective of both States and individuals: it defined the scope of State sovereignty in cases of territorial changes and permitted individuals to establish their status and ties with a specific successor State.

36. He shared the Commission's view as to the guiding principles of the draft articles. The draft was generally based upon the notion of effective nationality, which should prevent the granting of nationality to certain categories of nationals of the predecessor State who lacked an appropriate connection with the specific successor State. Lastly, the obligation to admit all habitual residents to the territory affected by the State succession was strictly connected with the right of refugees to return to their homes.

37. The principles relating to the presumption of acquisition of nationality of the successor State and the date of acquisition reflected the principle of automatic acquisition of nationality which had existed in international law prior to the Second World War. However, certain provisions of the draft articles did not seem to reflect the current state of international law. In particular, it was not clear that every person had a right to nationality under general customary law, although such a right would be desirable. A wider retroactive application of the attribution of nationality by the successor State would reflect State practice in that field. The Commission's single approach to the different ways in which States united did not correspond to State practice. Nor did State practice confirm the general duty of the States concerned to grant an option to individuals affected by the State succession. His delegation accepted those proposals as an expression of the progressive development of international law in that field.

38. The extremely interesting but debatable issue of the effects of a State succession on the nationality of corporations should not be taken up by the Commission. Thus the Commission's work on the topic of nationality had been completed. His Government would welcome the adoption of the draft articles in the form of a General Assembly declaration.

39. With regard to the jurisdictional immunity of States, his Government followed State practice closely and endorsed the current shift towards a restrictive doctrine of immunity. He therefore welcomed the Commission's resumption of work on jurisdictional immunities of States and their property, and hoped that the result of that work would be a

draft convention, which would be a useful tool for modifying internal practice.

40. The proposal put forward in the Working Group on that topic to bring the provision of the draft articles relating to the "concept of State for purpose of immunity" into line with the concept of a State contained in the Commission's draft articles on State responsibility was valuable and worth considering. With regard to the distinction between the nature and purpose tests proposed to determine the commercial character of a contract or transaction, his delegation fully endorsed the Working Group's suggestion to delete paragraph 2 of draft article 2 and retain the reference in that article to commercial contracts or transactions without further explanation.

41. He welcomed the new issue of jurisdictional immunity in actions arising out of *jus cogens* norms in the case of acts of States which violated human rights norms having the character of *jus cogens*. Recent events had indicated that that topic deserved the attention of the Commission.

42. **Mr. Hwang Yong-shik** (Republic of Korea) said that his delegation supported the content of the draft articles on nationality of natural persons in relation to succession of States, which reflected the general principles of existing international law. Since the attribution or withdrawal of nationality was ultimately regulated by national legislation or a treaty between the States concerned, the adoption of the draft articles in the form of a declaration rather than a convention meant that they could serve as a guideline for States when they adopted such legislation or treaties.

43. The most important element regarding the acquisition of nationality was set out in draft article 5, which should therefore be considered as the basic solution for the different types of succession of States, insofar as the will of the persons concerned was not expressed or other draft articles or treaties were not applicable. His delegation also attached great importance to draft article 12, as many Korean people had a strong aspiration for reuniting with family members who had been separated for historical reasons.

44. The indicative approach taken by the Working Group on jurisdictional immunities of States and their properties with regard to the definition of "commercial transactions" appeared to depend heavily on the competence of the organs of the forum State, and thus could result in a fragmentation of rules rather than a standardization. The suggestion that article 2 should refer only to "commercial contracts or transactions" seemed to leave the interpretation of those terms to the discretion of each State. A constructive discussion on that critical issue must take place soon in order to prevent arbitrary interpretations that would undermine the benefits of the restrictive doctrine.

45. In principle he supported the Special Rapporteur's approach to the topic of unilateral acts of States, which focused on the core constituent elements of a legally binding unilateral act. However, the proposed definition of "unilateral legal acts of States" in the draft articles contained in the Special Rapporteur's second report did not resolve the issue of how legally valid promises could be distinguished from mere political commitments. The decisive factor seemed to be whether a State had genuinely intended to assume a legal obligation when issuing a unilateral declaration. The element of intent could be hard to prove and was thus susceptible to interpretation. However, it would not be productive to attempt any further refinement of criteria for the purposes of distinction at the present stage.

46. Elaborating specific rules on unilateral legal acts with particular regard to observance and revocation was a daunting task. Given the relative scarcity of available international practice or doctrine, a more extensive accumulation of State practice was required if the Commission was to tackle such issues effectively. The International Court of Justice nad ruled that a restrictive interpretation was called for when States made statements by which their freedom of action was to be limited, and he suggested that similar criteria should be applied to the rules governing unilateral legal acts. If the rules were not drafted with great care, States might be disinclined to publish their policies for fear of being legally bound by the rules.

47. With regard to international liability for injurious consequences arising out of acts not prohibited by international law, his delegation believed that the duty of prevention should be regarded as an obligation not of result but of conduct, as embodied in the relevant international environmental treaties. Failure to comply with the obligation of prevention would therefore entail State responsibility, although he recognized that the concept of international liability, as originally envisaged by the Commission, might thereby be somewhat weakened. It was nevertheless important to elaborate rules on international liability per se. Moreover, his delegation shared the view that the draft articles on prevention should not be related to the idea of punitive damage currently being discussed by the Commission in the context of State responsibility.

48. It was too early to determine the final form the draft articles on that topic should take, since international law in the area was still evolving. A framework convention might foster desirable State practice and relevant legal development. With regard to dispute settlement procedures,

draft article 17 provided a reasonable solution, focusing as it did on the mutual agreement of the States concerned. As for the Commission's future work on the topic, his delegation supported suspending work until the Commission finished its second reading of the draft articles on the regime of prevention.

49. **Mr. González** (Venezuela), after reiterating the importance of the links between the Sixth Committee, the Commission, international bodies, such as human rights treaty bodies and regional entities such as the Inter-American Court of Human Rights, welcomed the conclusion of the Commission's work on nationality in relation to the succession of States, with particular reference to natural persons. His delegation had always stressed the need for the Commission's work to be embodied in draft conventions, as part of its work on the codification and progressive development of international law, but it agreed with the Commission that in the case of nationality it was more practical for the draft articles to take the form of a declaration contained within a General Assembly resolution, which would be recommendatory in character.

50. The structure of the draft articles, with general provisions in the first part and specific ones in the second, was entirely acceptable to his delegation. The text properly balanced the right of States to attribute nationality with the right of individuals to acquire it. The enunciation of the fundamental principles of international law in the preamble, particularly its second, fourth and fifth paragraphs, provided the text with a solid foundation. Lastly, his delegation shared the view that the Commission's work on the topic had been concluded; there was no need to consider the question of the nationality of legal persons until an appropriate opportunity arose.

51. **Mr. Rogachev** (Russian Federation) said that the draft articles on nationality of natural persons in relation to the succession of States were a valuable contribution to the codification and progressive development of international law. The topic was extremely important and had far-reaching, practical consequences, as recent experience had shown. The loss of nationality, particularly when involuntary, could have a significant impact on a person's human rights. There were cases where States made a policy decision to infringe the rights of a section of its population in order to exclude it from participation in political, economic or cultural life. The draft articles contained all the elements needed to resolve the practical problems that might arise in that area. His delegation agreed with the Commission that the main aim of the draft articles was to prevent statelessness, in accordance with the Universal Declaration of Human Rights and other international instruments. It also agreed that States had an obligation to attribute nationality to natural persons who on the date of a succession held the nationality of the predecessor State and had an effective link with the territory to which the succession of States related.

52. His delegation endorsed the provisions of Part I, especially those of draft articles 5 and 7. He wished, however, to comment on some specific points. Thus the definition of "succession of States" in draft article 2, subparagraph (a), which was taken from the Vienna Conventions of 1978 and 1983, was not entirely appropriate to the succession of States as applied to nationality. What was important for nationality was not the "responsibility for the international relations of territory" but the change in sovereignty over that territory. His delegation also believed that draft article 2 might include a definition of the term "habitual residence", which, as one of the key aspects of the draft articles, should have a single meaning and application. Draft article 8, paragraph 2, might also be better redrafted: it was surely not appropriate to talk of attribution of nationality "against the will of the persons concerned", as though the forcible imposition of nationality could be contemplated.

53. With regard to draft article 11, paragraph 1 should be preceded by a provision obliging the States concerned to take unilateral and collective measures to create conditions under which persons eligible to acquire the nationality of two or more States concerned could express their will freely.

54. Draft article 13 did not deal properly with cases where the child of a person concerned who had not acquired any nationality was born on the territory of a third State. Moreover, the criterion of birthplace should not be the only one applied to children.

55. The wording of draft article 15 was not entirely satisfactory. His delegation would prefer to replace the phrase "by discriminating on any ground" with "by applying to them any rules or practice that discriminate on any grounds whatsoever".

56. His delegation attached great importance to the elaboration of clear definitions that made it possible to determine in specific cases which State or States had the obligation to attribute nationality to persons concerned. It agreed that the basic criterion should be the need for an "effective link" between the person concerned and the relevant State, and believed that the criteria set out in Part II of the draft articles fully met that need. The provisions dealing with cases where an individual could acquire the nationality of several concerned States were also to be welcomed. His delegation did, however, have

some reservations about some details of the provisions in Part II.

57. The wording of draft articles 20, 22, subparagraph (a), and 24, subparagraph (a), should clearly reflect that their applicability of those articles extended to concerned persons who had their habitual residence in the concerned State "on the date of the succession of States". Draft articles 22, paragraph (b) (i), and 24, paragraph (b) (i), could also be improved. The text should read: "... connection with a constituent unit of the predecessor State, the territory of which has become the territory of the successor State or part of that territory". That would avoid the limitations on applicability contained in the aforementioned provisions.

58. Lastly, with regard to the form that the draft articles should take, his delegation favoured a convention and therefore endorsed the argument put forward by the representative of France the previous day. His delegation could accept that the draft articles should be adopted in the form of a declaration only on the understanding that in future they would be finalized in the form of a convention. It would not be the first time that such a course of action had been taken in relation to a human rights instrument.

59. **Mr. Hamid** (Pakistan), referring to the topic of reservations to treaties, said that it might be unwise to derail the existing regime of reservations established by the 1969 Vienna Convention on the Law of Treaties and subsequently confirmed in the 1978 Vienna Convention on the Succession of States in respect of Treaties and the 1986 Vienna Convention on the Law of Treaties between States and International Organizations, as the rules encompassed therein had acquired the status of customary norms on the strength of their wide acceptance. Moreover, they succeeded in striking a balance between the objectives of preserving the text of the treaty and universal participation. He therefore did not favour establishing a separate regime for human rights treaties that did not permit reservations, as the objective of universal participation would be impaired. Likewise he did not favour the establishment of a monitoring body to determine the nature and validity of any reservations expressed, as it was States who should be responsible for ensuring that their reservations were consistent with the purposes and objectives of a given treaty. Nevertheless, he was not opposed to the clarification of any ambiguities in the Vienna Conventions by means of guidelines, provided that they in no way altered the existing regime of reservations.

60. While commending the efforts of the International Law Commission to balance the interests of States and individuals in avoiding statelessness, he said that the draft articles on nationality of natural persons in relation to the succession of States should not be seen as condoning dual nationality, which many States, including his own, did not recognize. Nor was he in favour of the option which gave individuals the right to choose their nationality after a succession had taken place, as it could give rise to conflicts between States. He therefore strongly supported the principle that a person who had the nationality of the predecessor State and who resided in the territory affected by the succession should acquire the nationality of the successor State on the date of the succession, with habitual residence as the vital factor linking the natural person and the successor State. He had no problems, however, with the provisions concerning the unity of family and also supported the proposal to adopt the draft articles in the form of a declaration.

61. He welcomed the provisional adoption of some of the draft articles on state responsibility, but expressed concern that draft article 1 could be interpreted to mean that any State could bring action against the defaulting State, whether or not it was affected by the so-called internationally wrongful act. In his view, only the affected State should be able to bring action, and only then if it could prove damage.

62. Turning to the topic of international liability for injurious consequences arising out of acts not prohibited by international law, he agreed that every State had the right to engage in lawful activities within its territory so long as it complied with the obligation to ensure that its enjoyment of that right did not harm another State, failing which liability should be attached to it. He was not therefore averse to the inclusion in the draft articles on the topic of an illustrative list of activities which involved a risk of transboundary harm, since an exhaustive list would be difficult to compile. Since no provision had been made in the draft articles for a dispute settlement mechanism, he favoured deletion of the word "significant" before the words "transboundary harm". In the event of harm, the aggrieved State should be entitled to compensation from the State from which the harm emanated.

63. On the question of diplomatic protection, he noted that unfortunate incidents involving diplomatic personnel and missions had recently taken place in various countries, even though the receiving States had complied with their obligations under the relevant conventions to take all necessary precautions to safeguard the lives and property of diplomatic agents, including the premises of diplomatic missions. It was therefore important that diplomatic missions should also observe the rules and regulations formulated by the host country with a view to the protection of such personnel and property.

64. Lastly, he expressed his full support for close cooperation between the Commission and other legal bodies, such as the Asian-African Legal Consultative Committee. Meaningful dialogue should also be strengthened between the Sixth Committee and the Commission, whose report should be made available in time for Governments to examine it and formulate their policies with a view to enhancing the Committee's input. It was inadvisable to specify a definite time-frame for the Commission's sessions, which could be split if the workload so demanded.

Agenda item 159: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization (*continued*) (A/C.6/54/L.3)

65. **Mr. Raichev** (Bulgaria), introducing draft resolution A/C.6/54/L.3 on behalf of the original sponsors, who had been joined by Nigeria, said that the text was largely based on that of General Assembly resolution 53/107 and reflected current developments relating to implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions, with a view to obtaining general support. Only a few minor changes had been made to the preamble and paragraph 4. Paragraph 5, which was new, was based on the text of the recommendation of the Special Committee contained in paragraph 33 of its report (A/54/33), while paragraph 7 referred to the decision to transmit the most recent report of the Secretary-General on the subject (A/54/383) to the Economic and Social Council in the belief that the Council would benefit from the views contained in the report when considering the conclusions and findings of the ad hoc expert group. Under paragraph 9, the Secretary-General's report was to be transmitted also to the Special Committee for its consideration, while under paragraph 10, the General Assembly would decide to establish a working group of the Sixth Committee at the fifty-fifth session of the General Assembly, since the sponsors believed that such a group would constitute the most appropriate forum for the consideration and analysis of further progress in the elaboration of effective measures in connection with the subject. He hoped that the text would be adopted by consensus.

The meeting rose at 12.40 p.m.